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AN ACT
RELATING TO PUBLIC EMPLOYEES; ENACTING THE PUBLIC EMPLOYEE
BARGAINING ACT; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. --This act may be cited as the
"Public Employee Bargaining Act".

Section 2. PURPOSE OF ACT. --The purpose of the Public
Employee Bargaining Act is to guarantee public employees the
right to organize and bargain collectively with their
employers, to promote harmonious and cooperative
relationships between public employers and public employees
and to protect the public interest by ensuring, at all times,
the orderly operation and functioning of the state and its
political subdivisions.

Section 3. CONFLICTS. --In the event of conflict with
other laws, the provisions of the Public Employee Bargaining
Act shall supersede other previously enacted legislation and
regulations; provided that the Public Employee Bargaining Act
shall not supersede the provisions of the Bateman Act, the
Personnel Act, Sections 10-7-1 through 10-7-19 NMSA 1978, the
Group Benefits Act, the Per Diem and Mileage Act, the Retiree
Health Care Act, public employee retirement laws or the Tort
Claims Act.

Section 4. DEFINITIONS. --As used in the Public Employee

1 Bargaining Act:

2 A. "appropriate bargaining unit" means a group of
3 public employees designated by the board or local board for
4 the purpose of collective bargaining;

5 B. "appropriate governing body" means the
6 policymaking body or individual representing a public
7 employer as designated in Section 7 of the Public Employee
8 Bargaining Act;

9 C. "authorization card" means a signed affirmation
10 by a member of an appropriate bargaining unit designating a
11 particular organization as exclusive representative;

12 D. "board" means the public employee labor
13 relations board;

14 E. "certification" means the designation by the
15 board or local board of a labor organization as the exclusive
16 representative for all public employees in an appropriate
17 bargaining unit;

18 F. "collective bargaining" means the act of
19 negotiating between a public employer and an exclusive
20 representative for the purpose of entering into a written
21 agreement regarding wages, hours and other terms and
22 conditions of employment;

23 G. "confidential employee" means a person who
24 devotes a majority of his time to assisting and acting in a
25 confidential capacity with respect to a person who

1 formulates, determines and effectuates management policies;

2 H. "emergency" means a one-time crisis that was
3 unforeseen and unavoidable;

4 I. "exclusive representative" means a labor
5 organization that, as a result of certification, has the
6 right to represent all public employees in an appropriate
7 bargaining unit for the purposes of collective bargaining;

8 J. "fair share" means the payment to a labor
9 organization which is the exclusive representative for an
10 appropriate bargaining unit by an employee of that bargaining
11 unit who is not a member of that labor organization equal to
12 a certain percentage of membership dues. Such figure is to
13 be calculated based on United States and New Mexico statutes
14 and case law identifying those expenditures by a labor
15 organization which are permissibly chargeable to all
16 employees in the appropriate bargaining unit under United
17 States and New Mexico statutes and case law, including but
18 not limited to all expenditures incurred by the labor
19 organization in negotiating the contract applicable to all
20 employees in the appropriate bargaining unit, servicing such
21 contract and representing all such employees in grievances
22 and disciplinary actions;

23 K. "impasse" means failure of a public employer
24 and an exclusive representative, after good-faith bargaining,
25 to reach agreement in the course of negotiating a collective

1 bargaining agreement;

2 L. "labor organization" means an employee
3 organization, one of whose purposes is the representation of
4 public employees in collective bargaining and in otherwise
5 meeting, consulting and conferring with employers on matters
6 pertaining to employment relations;

7 M. "local board" means a local labor relations
8 board established by a public employer, other than the state,
9 through ordinance, resolution or charter amendment;

10 N. "lockout" means an act by a public employer to
11 prevent its employees from going to work for the purpose of
12 resisting the demands of the employees' exclusive
13 representative or for the purpose of gaining a concession
14 from the exclusive representative;

15 O. "management employee" means an employee who is
16 engaged primarily in executive and management functions and
17 is charged with the responsibility of developing,
18 administering or effectuating management policies. An
19 employee shall not be deemed a management employee solely
20 because the employee participates in cooperative decision-
21 making programs on an occasional basis;

22 P. "mediation" means assistance by an impartial
23 third party to resolve an impasse between a public employer
24 and an exclusive representative regarding employment
25 relations through interpretation, suggestion and advice;

1 Q. "professional employee" means an employee whose
2 work is predominantly intellectual and varied in character
3 and whose work involves the consistent exercise of discretion
4 and judgment in its performance and requires knowledge of an
5 advanced nature in a field of learning customarily requiring
6 specialized study at an institution of higher education or
7 its equivalent. The work of a professional employee is of
8 such character that the output or result accomplished cannot
9 be standardized in relation to a given period of time;

10 R. "public employee" means a regular
11 nonprobationary employee of a public employer; provided that,
12 in the public schools, "public employee" shall also include a
13 regular probationary employee;

14 S. "public employer" means the state or a
15 political subdivision thereof, including a municipality that
16 has adopted a home rule charter, and does not include a
17 government of an Indian nation, tribe or pueblo, provided
18 that state educational institutions as provided in
19 Article 12, Section 11 of the constitution of New Mexico
20 shall be considered public employers other than state for
21 collective bargaining purposes only;

22 T. "strike" means a public employee's refusal, in
23 concerted action with other public employees, to report for
24 duty or his willful absence in whole or in part from the
25 full, faithful and proper performance of the duties of

1 employment for the purpose of inducing, influencing or
2 coercing a change in the conditions, compensation, rights,
3 privileges or obligations of public employment; and

4 U. "supervisor" means an employee who devotes a
5 majority of work time to supervisory duties, who customarily
6 and regularly directs the work of two or more other employees
7 and who has the authority in the interest of the employer to
8 hire, promote or discipline other employees or to recommend
9 such actions effectively, but "supervisor" does not include
10 an individual who performs merely routine, incidental or
11 clerical duties or who occasionally assumes a supervisory or
12 directory role or whose duties are substantially similar to
13 those of his subordinates and does not include a lead
14 employee or an employee who participates in peer review or
15 occasional employee evaluation programs.

16 Section 5. RIGHTS OF PUBLIC EMPLOYEES.--Public
17 employees, other than management employees and confidential
18 employees, may form, join or assist a labor organization for
19 the purpose of collective bargaining through representatives
20 chosen by public employees without interference, restraint or
21 coercion and shall have the right to refuse any such
22 activities.

23 Section 6. RIGHTS OF PUBLIC EMPLOYERS.--Unless limited
24 by the provisions of a collective bargaining agreement or by
25 other statutory provision, a public employer may:

1 A. direct the work of, hire, promote, assign,
2 transfer, demote, suspend, discharge or terminate public
3 employees;

4 B. determine qualifications for employment and the
5 nature and content of personnel examinations;

6 C. take actions as may be necessary to carry out
7 the mission of the public employer in emergencies; and

8 D. retain all rights not specifically limited by a
9 collective bargaining agreement or by the Public Employee
10 Bargaining Act.

11 Section 7. APPROPRIATE GOVERNING BODY--PUBLIC
12 EMPLOYER. --The appropriate governing body of a public
13 employer is the policymaking individual or body representing
14 the public employer. In the case of the state, the
15 appropriate governing body is the governor or his designee
16 or, in the case of a constitutionally created body, the
17 constitutionally designated head of that body. At the local
18 level, the appropriate governing body is the elected or
19 appointed representative body or individual charged with
20 management of the local public body. In the event of
21 dispute, the board shall determine the appropriate governing
22 body.

23 Section 8. PUBLIC EMPLOYEE LABOR RELATIONS BOARD--
24 CREATED--TERMS--QUALIFICATIONS. --

25 A. The "public employee labor relations board" is

1 created. The board consists of three members appointed by
2 the governor. The governor shall appoint one member
3 recommended by organized labor representatives actively
4 involved in representing public employees, one member
5 recommended by public employers actively involved in
6 collective bargaining and one member jointly recommended by
7 the other two appointees.

8 B. Except for appointments made in 2003, board
9 members shall serve for a period of three years with terms
10 commencing on July 1. Vacancies shall be filled by
11 appointment by the governor in the same manner as the
12 original appointment, and such appointments shall only be
13 made for the remainder of the unexpired term. A board member
14 may serve an unlimited number of terms.

15 C. During the term for which he is appointed, a
16 board member shall not hold or seek any other political
17 office or public employment or be an employee of a labor
18 organization or an organization representing public employees
19 or public employers.

20 D. Each board member shall be paid per diem and
21 mileage in accordance with the provisions of the Per Diem and
22 Mileage Act.

23 E. For the purpose of making initial appointments
24 to the board in 2003, the governor shall designate one member
25 to serve a one-year term, one member to serve a two-year term

1 and one member to serve a three-year term. Thereafter, all
2 members shall be appointed for three-year terms.

3 Section 9. BOARD-- POWERS AND DUTIES. --

4 A. The board shall promulgate rules necessary to
5 accomplish and perform its functions and duties as
6 established in the Public Employee Bargaining Act, including
7 the establishment of procedures for:

8 (1) the designation of appropriate
9 bargaining units;

10 (2) the selection, certification and
11 decertification of exclusive representatives; and

12 (3) the filing of, hearing on and
13 determination of complaints of prohibited practices.

14 B. The board shall:

15 (1) hold hearings and make inquiries
16 necessary to carry out its functions and duties;

17 (2) conduct studies on problems pertaining
18 to employee-employer relations; and

19 (3) request from public employers and labor
20 organizations the information and data necessary to carry out
21 the board's functions and responsibilities.

22 C. The board may issue subpoenas requiring, upon
23 reasonable notice, the attendance and testimony of witnesses
24 and the production of evidence, including books, records,
25 correspondence or documents relating to the matter in

1 question. The board may prescribe the form of subpoena, but
2 it shall adhere insofar as practicable to the form used in
3 civil actions in the district court. The board may
4 administer oaths and affirmations, examine witnesses and
5 receive evidence.

6 D. The board shall decide issues by majority vote
7 and shall issue its decisions in the form of written orders
8 and opinions.

9 E. The board may hire personnel or contract with
10 third parties as it deems necessary to assist it in carrying
11 out its functions.

12 F. The board has the power to enforce provisions
13 of the Public Employee Bargaining Act through the imposition
14 of appropriate administrative remedies.

15 G. A rule promulgated by the board or a local
16 board shall not require, directly or indirectly, as a
17 condition of continuous employment, a public employee covered
18 by the Public Employee Bargaining Act to pay money to a labor
19 organization that is certified as an exclusive
20 representative. The issue of fair share shall be left a
21 permissive subject of bargaining by the public employer and
22 the exclusive representative of each bargaining unit.

23 Section 10. LOCAL BOARD--CREATED. --

24 A. With the approval of the board, a public
25 employer other than the state may, by ordinance, resolution

1 or charter amendment, create a local board similar to the
2 public employee labor relations board. Once created and
3 approved, the local board shall assume the duties and
4 responsibilities of the public employee labor relations
5 board. A local board shall follow all procedures and
6 provisions of the Public Employee Bargaining Act unless
7 otherwise approved by the board.

8 B. The local board shall be composed of three
9 members appointed by the public employer. One member shall
10 be appointed on the recommendation of individuals
11 representing labor, one member shall be appointed on the
12 recommendation of individuals representing management and one
13 member shall be appointed on the recommendation of the first
14 two appointees.

15 C. Local board members shall serve one-year terms.
16 Local board members may serve an unlimited number of terms.
17 Vacancies shall be filled in the same manner as the original
18 appointment, and such appointments shall only be made for the
19 remainder of the unexpired term.

20 D. During the term for which he is appointed, a
21 local board member shall not hold or seek any other political
22 office or public employment or be an employee of a union or
23 an organization representing public employees or public
24 employers.

25 E. Each local board member shall be paid per diem

1 and mileage in accordance with the provisions of the Per Diem
2 and Mileage Act.

3 Section 11. LOCAL BOARD--POWERS AND DUTIES. --

4 A. The local board shall promulgate rules
5 necessary to accomplish and perform its functions and duties
6 as established in the Public Employee Bargaining Act,
7 including the establishment of procedures for:

8 (1) the designation of appropriate
9 bargaining units;

10 (2) the selection, certification and
11 decertification of exclusive representatives; and

12 (3) the filing of, hearing on and
13 determination of complaints of prohibited practices.

14 B. The local board shall:

15 (1) hold hearings and make inquiries
16 necessary to carry out its functions and duties;

17 (2) request information and data from public
18 employers and labor organizations to carry out the local
19 board's functions and responsibilities; and

20 (3) hire personnel or contract with third
21 parties as the appropriate governing body deems necessary to
22 assist the local board in carrying out its functions.

23 C. The local board may issue subpoenas requiring,
24 upon reasonable notice, the attendance and testimony of
25 witnesses and the production of evidence, including books,

1 records, correspondence or documents relating to the matter
2 in question. The local board may prescribe the form of
3 subpoena, but it shall adhere insofar as practicable to the
4 form used in civil actions in the district court. The local
5 board may administer oaths and affirmations, examine
6 witnesses and receive evidence.

7 D. The local board shall decide all issues by
8 majority vote and shall issue its decisions in the form of
9 written orders and opinions.

10 E. The local board has the power to enforce
11 provisions of the Public Employee Bargaining Act or a local
12 collective bargaining ordinance, resolution or charter
13 amendment through the imposition of appropriate
14 administrative remedies.

15 Section 12. HEARING PROCEDURES. --

16 A. The board or local board may hold hearings for
17 the purposes of:

- 18 (1) information gathering and inquiry;
19 (2) adopting rules; and
20 (3) adjudicating disputes and enforcing the
21 provisions of the Public Employee Bargaining Act and rules
22 adopted pursuant to that act.

23 B. The board or local board shall adopt rules
24 setting forth procedures to be followed during hearings of
25 the board or local board. The procedures adopted for

1 conducting adjudicatory hearings shall meet all minimal due
2 process requirements of the state and federal constitutions.

3 C. The board or local board may appoint a hearing
4 examiner to conduct any adjudicatory hearing authorized by
5 the board or local board. At the conclusion of the hearing,
6 the examiner shall prepare a written report, including
7 findings and recommendations, all of which shall be submitted
8 to the board or local board for its decision.

9 D. A rule proposed to be adopted by the board or
10 local board that affects a person or governmental entity
11 outside of the board or local board and its staff shall not
12 be adopted, amended or repealed without public hearing and
13 comment on the proposed action before the board or local
14 board. The public hearing shall be held after notice of the
15 subject matter of the rule, the action proposed to be taken,
16 the time and place of the hearing, the manner in which
17 interested persons may present their views and the method by
18 which copies of the proposed rule, proposed amendment or
19 repeal of an existing rule may be obtained. All meetings of
20 the board shall be held in Santa Fe. All meetings of local
21 boards shall be held in the county of residence of the local
22 public employer. Notice shall be published once at least
23 thirty days prior to the hearing date in a newspaper of
24 general circulation in the state or, in the case of a local
25 board hearing, in a newspaper of general circulation in the

1 county, and notice shall be mailed at least thirty days prior
2 to the hearing date to all persons who have made a written
3 request for advance notice of hearings.

4 E. All adopted rules shall be filed in accordance
5 with applicable state statutes.

6 F. A verbatim record made by electronic or other
7 suitable means shall be made of every rulemaking and
8 adjudicatory hearing. The record shall not be transcribed
9 unless required for judicial review or unless ordered by the
10 board or local board.

11 Section 13. APPROPRIATE BARGAINING UNITS. --

12 A. The board or local board shall, upon receipt of
13 a petition for a representation election filed by a labor
14 organization, designate the appropriate bargaining units for
15 collective bargaining. Appropriate bargaining units shall be
16 established on the basis of occupational groups or clear and
17 identifiable communities of interest in employment terms and
18 conditions and related personnel matters among the public
19 employees involved. Occupational groups shall generally be
20 identified as blue-collar, secretarial clerical, technical,
21 professional, paraprofessional, police, fire and corrections.
22 The parties, by mutual agreement, may further consolidate
23 occupational groups. Essential factors in determining
24 appropriate bargaining units shall include the principles of
25 efficient administration of government, the history of

1 collective bargaining and the assurance to public employees
2 of the fullest freedom in exercising the rights guaranteed by
3 the Public Employee Bargaining Act.

4 B. Within thirty days of a disagreement arising
5 between a public employer and a labor organization concerning
6 the composition of an appropriate bargaining unit, the board
7 or local board shall hold a hearing concerning the
8 composition of the bargaining unit before designating an
9 appropriate bargaining unit.

10 C. The board or local board shall not include in
11 an appropriate bargaining unit supervisors, managers or
12 confidential employees.

13 Section 14. ELECTIONS. --

14 A. Whenever, in accordance with rules prescribed
15 by the board or local board, a petition is filed by a labor
16 organization containing the signatures of at least thirty
17 percent of the public employees in an appropriate bargaining
18 unit, the board or local board shall conduct a secret ballot
19 representation election to determine whether and by which
20 labor organization the public employees in the appropriate
21 bargaining unit shall be represented. The ballot shall
22 contain the name of any labor organization submitting a
23 petition containing signatures of at least thirty percent of
24 the public employees in the appropriate bargaining unit. The
25 ballot shall also contain a provision allowing public

1 employees to indicate whether they do not desire to be
2 represented by a labor organization. An election shall only
3 be valid if forty percent of the eligible employees in the
4 bargaining unit vote in the election.

5 B. Once a labor organization has filed a valid
6 petition with the board or local board calling for a
7 representation election, other labor organizations may seek
8 to be placed on the ballot. Such an organization shall file
9 a petition containing the signatures of not less than thirty
10 percent of the public employees in the appropriate bargaining
11 unit no later than ten days after the board or the local
12 board and the public employer post a written notice that the
13 petition in Subsection A of this section has been filed by a
14 labor organization.

15 C. As an alternative to the provisions of
16 Subsection A of this section, a public employer and a labor
17 organization with a reasonable basis for claiming to
18 represent a majority of the employees in an appropriate
19 bargaining unit may establish an alternative appropriate
20 procedure for determining majority status. The procedure may
21 include a labor organization's submission of authorization
22 cards from a majority of the employees in an appropriate
23 bargaining unit. The board or local board shall not certify
24 an appropriate bargaining unit if the public employer objects
25 to the certification without an election.

1 D. If a labor organization receives a majority of
2 votes cast, it shall be certified as the exclusive
3 representative of all public employees in the appropriate
4 bargaining unit. Within fifteen days of an election in which
5 no labor organization receives a majority of the votes cast,
6 a runoff election between the two choices receiving the
7 largest number of votes cast shall be conducted. The board
8 or local board shall certify the results of the election,
9 and, when a labor organization receives a majority of the
10 votes cast, the board or local board shall certify the labor
11 organization as the exclusive representative of all public
12 employees in the appropriate bargaining unit.

13 E. An election shall not be conducted if an
14 election or runoff election has been conducted in the twelve-
15 month period immediately preceding the proposed
16 representation election. An election shall not be held
17 during the term of an existing collective bargaining
18 agreement, except as provided in Section 16 of the Public
19 Employee Bargaining Act.

20 Section 15. EXCLUSIVE REPRESENTATION. --

21 A. A labor organization that has been certified by
22 the board or local board as representing the public employees
23 in the appropriate bargaining unit shall be the exclusive
24 representative of all public employees in the appropriate
25 bargaining unit. The exclusive representative shall act for

1 all public employees in the appropriate bargaining unit and
2 negotiate a collective bargaining agreement covering all
3 public employees in the appropriate bargaining unit. The
4 exclusive representative shall represent the interests of all
5 public employees in the appropriate bargaining unit without
6 discrimination or regard to membership in the labor
7 organization.

8 B. This section does not prevent a public
9 employee, acting individually, from presenting a grievance
10 without the intervention of the exclusive representative. At
11 a hearing on a grievance brought by a public employee
12 individually, the exclusive representative shall be afforded
13 the opportunity to be present and make its views known. An
14 adjustment made shall not be inconsistent with or in
15 violation of the collective bargaining agreement then in
16 effect between the public employer and the exclusive
17 representative.

18 Section 16. DECERTIFICATION OF EXCLUSIVE
19 REPRESENTATIVE. --

20 A. A member of a labor organization or the labor
21 organization itself may initiate decertification of a labor
22 organization as the exclusive representative if thirty
23 percent of the public employees in the appropriate bargaining
24 unit make a written request to the board or local board for a
25 decertification election. Decertification elections shall be

1 held in a manner prescribed by rule of the board. An
2 election shall only be valid if forty percent of the eligible
3 employees in the bargaining unit vote in the election.

4 B. When there is a collective bargaining agreement
5 in effect, a request for a decertification election shall be
6 made to the board or local board no earlier than ninety days
7 and no later than sixty days before the expiration of the
8 collective bargaining agreement; provided, however, a request
9 for an election may be filed at any time after the expiration
10 of the third year of a collective bargaining agreement with a
11 term of more than three years.

12 C. When, within the time period prescribed in
13 Subsection B of this section, a competing labor organization
14 files a petition containing signatures of at least thirty
15 percent of the public employees in the appropriate bargaining
16 unit, a representation election rather than a decertification
17 election shall be conducted.

18 D. When an exclusive representative has been
19 certified but no collective bargaining agreement is in
20 effect, the board or local board shall not accept a request
21 for a decertification election earlier than twelve months
22 subsequent to a labor organization's certification as the
23 exclusive representative.

24 Section 17. SCOPE OF BARGAINING. --

25 A. Except for retirement programs provided

1 pursuant to the Public Employees Retirement Act or the
2 Educational Retirement Act, public employers and exclusive
3 representatives:

4 (1) shall bargain in good faith on wages,
5 hours and all other terms and conditions of employment and
6 other issues agreed to by the parties. However, neither the
7 public employer nor the exclusive representative shall be
8 required to agree to a proposal or to make a concession; and

9 (2) shall enter into written collective
10 bargaining agreements covering employment relations.

11 B. The obligation to bargain collectively imposed
12 by the Public Employee Bargaining Act shall not be construed
13 as authorizing a public employer and an exclusive
14 representative to enter into an agreement that is in conflict
15 with the provisions of any other statute of this state. In
16 the event of conflict between the provisions of any other
17 statute of this state and an agreement entered into by the
18 public employer and the exclusive representative in
19 collective bargaining, the statutes of this state shall
20 prevail.

21 C. Payroll deduction of the exclusive
22 representative's membership dues shall be a mandatory subject
23 of bargaining if either party chooses to negotiate the issue.
24 The amount of dues shall be certified in writing by an
25 official of the labor organization and shall not include

1 special assessments, penalties or fines of any type. The
2 public employer shall honor payroll deductions until the
3 authorization is revoked in writing by the public employee in
4 accordance with the negotiated agreement and for so long as
5 the labor organization is certified as the exclusive
6 representative. During the time that a board certification
7 is in effect for a particular appropriate bargaining unit,
8 the public employer shall not deduct dues for any other labor
9 organization.

10 D. The scope of bargaining for representatives of
11 public schools as well as educational employees in state
12 agencies shall include, as a mandatory subject of bargaining,
13 the impact of professional and instructional decisions made
14 by the employer.

15 E. An impasse resolution or an agreement provision
16 by the state and an exclusive representative that requires
17 the expenditure of funds shall be contingent upon the
18 specific appropriation of funds by the legislature and the
19 availability of funds. An impasse resolution or an agreement
20 provision by a public employer other than the state or the
21 public schools and an exclusive representative that requires
22 the expenditure of funds shall be contingent upon the
23 specific appropriation of funds by the appropriate governing
24 body and the availability of funds. An agreement provision
25 by a local school board and an exclusive representative that

1 requires the expenditure of funds shall be contingent upon
2 ratification by the appropriate governing body. An
3 arbitration decision shall not require the reappropriation of
4 funds.

5 F. An agreement shall include a grievance
6 procedure to be used for the settlement of disputes
7 pertaining to employment terms and conditions and related
8 personnel matters. The grievance procedure shall provide for
9 a final and binding determination. The final determination
10 shall constitute an arbitration award within the meaning of
11 the Uniform Arbitration Act; such award shall be subject to
12 judicial review pursuant to the standard set forth in the
13 Uniform Arbitration Act. The costs of an arbitration
14 proceeding conducted pursuant to this subsection shall be
15 shared equally by the parties.

16 G. The following meetings shall be closed:

17 (1) meetings for the discussion of
18 bargaining strategy preliminary to collective bargaining
19 negotiations between the public employer and the exclusive
20 representative of the public employees of the public
21 employer;

22 (2) collective bargaining sessions; and

23 (3) consultations and impasse resolution
24 procedures at which the public employer and the exclusive
25 representative of the appropriate bargaining unit are

1 present.

2 Section 18. IMPASSE RESOLUTION. --

3 A. The following negotiations and impasse
4 procedures shall be followed by the state and exclusive
5 representatives for state employees:

6 (1) a request to the state for the
7 commencement of initial negotiations shall be filed in
8 writing by the exclusive representative no later than June 1
9 of the year in which negotiations are to take place.

10 Negotiations shall begin no later than July 1 of that year;

11 (2) in subsequent years, negotiations agreed
12 to by the parties shall begin no later than August 1
13 following the submission of written notice to the state by
14 the exclusive representative no later than July 1 of the year
15 in which negotiations are to take place;

16 (3) if an impasse occurs during negotiations
17 between the parties, and if an agreement is not reached by
18 the parties by October 1, either party may request mediation
19 services from the board. A mediator from the federal
20 mediation and conciliation service shall be assigned by the
21 board to assist in negotiations unless the parties agree to
22 another mediator;

23 (4) the mediator shall provide services to
24 the parties until the parties reach agreement or the mediator
25 believes that mediation services are no longer helpful or

1 until November 1, whichever occurs first; and

2 (5) if the impasse continues after
3 November 1, either party may request a list of seven
4 arbitrators from the federal mediation and conciliation
5 service. One arbitrator shall be chosen by the parties by
6 alternately striking names from such list. Who strikes first
7 shall be determined by coin toss. The arbitrator shall
8 render a final, binding, written decision resolving
9 unresolved issues pursuant to Subsection E of Section 17 of
10 the Public Employee Bargaining Act and the Uniform
11 Arbitration Act no later than thirty days after the
12 arbitrator has been notified of his or her selection by the
13 parties. The arbitrator's decision shall be limited to a
14 selection of one of the two parties' complete, last, best
15 offer. The costs of an arbitrator and the arbitrator's
16 related costs conducted pursuant to this subsection shall be
17 shared equally by the parties. Each party shall be
18 responsible for bearing the cost of presenting its case. The
19 decision shall be subject to judicial review pursuant to the
20 standard set forth in the Uniform Arbitration Act.

21 B. The following impasse procedures shall be
22 followed by all public employers and exclusive
23 representatives, except the state and the state's exclusive
24 representatives:

25 (1) if an impasse occurs, either party may

1 request from the board or local board that a mediator be
2 assigned to the negotiations unless the parties can agree on
3 a mediator. A mediator with the federal mediation and
4 conciliation service shall be assigned by the board or local
5 board to assist negotiations unless the parties agree to
6 another mediator; and

7 (2) if the impasse continues after a thirty-
8 day mediation period, either party may request a list of
9 seven arbitrators from the federal mediation and conciliation
10 service. One arbitrator shall be chosen by the parties by
11 alternately striking names from such list. Who strikes first
12 shall be determined by coin toss. The arbitrator shall
13 render a final, binding, written decision resolving
14 unresolved issues pursuant to Subsection E of Section 17 of
15 the Public Employee Bargaining Act and the Uniform
16 Arbitration Act no later than thirty days after the
17 arbitrator has been notified of his or her selection by the
18 parties. The arbitrator's decision shall be limited to a
19 selection of one of the two parties' complete, last, best
20 offer. The costs of an arbitrator and the arbitrator's
21 related costs conducted pursuant to this subsection shall be
22 shared equally by the parties. Each party shall be
23 responsible for bearing the cost of presenting its case. The
24 decision shall be subject to judicial review pursuant to the
25 standard set forth in the Uniform Arbitration Act.

1 C. A public employer other than the state may
2 enter into a written agreement with the exclusive
3 representative setting forth an alternative impasse
4 resolution procedure.

5 D. In the event that an impasse continues after
6 the expiration of a contract, the existing contract will
7 continue in full force and effect until it is replaced by a
8 subsequent written agreement. However, this shall not
9 require the public employer to increase any employees'
10 levels, steps or grades of compensation contained in the
11 existing contract.

12 Section 19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES. -- A
13 public employer or his representative shall not:

14 A. discriminate against a public employee with
15 regard to terms and conditions of employment because of the
16 employee's membership in a labor organization;

17 B. interfere with, restrain or coerce a public
18 employee in the exercise of a right guaranteed pursuant to
19 the Public Employee Bargaining Act;

20 C. dominate or interfere in the formation,
21 existence or administration of a labor organization;

22 D. discriminate in regard to hiring, tenure or a
23 term or condition of employment in order to encourage or
24 discourage membership in a labor organization;

25 E. discharge or otherwise discriminate against a

1 public employee because he has signed or filed an affidavit,
2 petition, grievance or complaint or given information or
3 testimony pursuant to the provisions of the Public Employee
4 Bargaining Act or because a public employee is forming,
5 joining or choosing to be represented by a labor
6 organization;

7 F. refuse to bargain collectively in good faith
8 with the exclusive representative;

9 G. refuse or fail to comply with a provision of
10 the Public Employee Bargaining Act or board rule; or

11 H. refuse or fail to comply with a collective
12 bargaining agreement.

13 Section 20. PUBLIC EMPLOYEES--LABOR ORGANIZATIONS--
14 PROHIBITED PRACTICES.--A public employee or labor
15 organization or its representative shall not:

16 A. discriminate against a public employee with
17 regard to labor organization membership because of race,
18 color, religion, creed, age, sex or national origin;

19 B. interfere with, restrain or coerce any public
20 employee in the exercise of a right guaranteed pursuant to
21 the provisions of the Public Employee Bargaining Act;

22 C. refuse to bargain collectively in good faith
23 with a public employer;

24 D. refuse or fail to comply with a collective
25 bargaining or other agreement with the public employer;

1 E. refuse or fail to comply with a provision of
2 the Public Employee Bargaining Act; or

3 F. picket homes or private businesses of elected
4 officials or public employees.

5 Section 21. STRIKES AND LOCKOUTS PROHIBITED. --

6 A. A public employee or labor organization shall
7 not engage in a strike. A labor organization shall not
8 cause, instigate, encourage or support a public employee
9 strike. A public employer shall not cause, instigate or
10 engage in a public employee lockout.

11 B. A public employer may apply to the district
12 court for injunctive relief to end a strike, and an exclusive
13 representative of public employees affected by a lockout may
14 apply to the district court for injunctive relief to end a
15 lockout.

16 C. The board or local board, upon a clear and
17 convincing showing of proof at a hearing that a labor
18 organization directly caused or instigated a public employee
19 strike, may impose appropriate penalties on that labor
20 organization, up to and including decertification of the labor
21 organization with respect to any of its bargaining units
22 which struck as a result of such causation or instigation.

23 Section 22. AGREEMENTS VALID-- ENFORCEMENT. -- Collective
24 bargaining agreements and other agreements between public
25 employers and exclusive representatives shall be valid and

1 enforceable according to their terms when entered into in
2 accordance with the provisions of the Public Employee
3 Bargaining Act.

4 Section 23. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW.--

5 A. The board or local board may request the
6 district court to enforce orders issued pursuant to the
7 Public Employee Bargaining Act, including those for
8 appropriate temporary relief and restraining orders. The
9 court shall consider the request for enforcement on the
10 record made before the board or local board. It shall uphold
11 the action of the board or local board and take appropriate
12 action to enforce it unless it concludes that the order is:

13 (1) arbitrary, capricious or an abuse of
14 discretion;

15 (2) not supported by substantial evidence on
16 the record considered as a whole; or

17 (3) otherwise not in accordance with law.

18 B. A person or party, including a labor
19 organization affected by a final rule, order or decision of
20 the board or local board, may appeal to the district court
21 for further relief. All such appeals shall be based upon the
22 record made at the board or local board hearing. All such
23 appeals to the district court shall be taken within thirty
24 days of the date of the final rule, order or decision of the
25 board or local board. Actions taken by the board or local

1 board shall be affirmed unless the court concludes that the
2 action is:

3 (1) arbitrary, capricious or an abuse of
4 discretion;

5 (2) not supported by substantial evidence on
6 the record considered as a whole; or

7 (3) otherwise not in accordance with law.

8 Section 24. EXISTING COLLECTIVE BARGAINING UNITS. --

9 A. Bargaining units established prior to July 1,
10 1999 shall continue to be recognized as appropriate
11 bargaining units for the purposes of the Public Employee
12 Bargaining Act. Bargaining units established between July 1,
13 1999 and the effective date of that act shall continue in
14 effect only if the unit is covered by a collective bargaining
15 agreement on the date of this act.

16 B. A labor organization that was recognized by a
17 public employer as the exclusive representative of an
18 appropriate bargaining unit on June 30, 1999 shall be
19 recognized as the exclusive representative of the unit on the
20 effective date of the Public Employee Bargaining Act;
21 provided, however, that the public employer shall not enter
22 into a new collective bargaining agreement pursuant to this
23 subsection unless the labor organization demonstrates
24 majority support to the public employer pursuant to
25 Section 14 of the Public Employee Bargaining Act. A labor

1 organization which attempts and fails to show majority
2 support shall no longer be recognized as the exclusive
3 bargaining representative of that unit.

4 Section 25. EXISTING COLLECTIVE BARGAINING
5 AGREEMENTS. -- Nothing in the Public Employee Bargaining Act
6 shall be construed to annul or modify a collective bargaining
7 agreement entered into between a public employer and an
8 exclusive representative prior to the effective date of the
9 Public Employee Bargaining Act. Nor shall anything in the
10 Public Employee Bargaining Act be construed to annul or
11 modify the status of an existing or recognized exclusive
12 representative.

13 Section 26. EXISTING ORDINANCES PROVIDING FOR PUBLIC
14 EMPLOYEE BARGAINING. --

15 A. A public employer other than the state that
16 prior to October 1, 1991 adopted by ordinance, resolution or
17 charter amendment a system of provisions and procedures
18 permitting employees to form, join or assist a labor
19 organization for the purpose of bargaining collectively
20 through exclusive representatives may continue to operate
21 under those provisions and procedures. Any substantial
22 change after January 1, 2003 to any ordinance, resolution or
23 charter amendment shall subject the public employer to full
24 compliance with the provisions of Subsection B of Section 26
25 of the Public Employee Bargaining Act.

1 B. A public employer other than the state that
2 subsequent to October 1, 1991 adopts by ordinance, resolution
3 or charter amendment a system of provisions and procedures
4 permitting employees to form, join or assist a labor
5 organization for the purpose of bargaining collectively
6 through exclusive representatives freely chosen by its
7 employees may operate under those provisions and procedures
8 rather than those set forth in the Public Employee Bargaining
9 Act; provided that the employer shall comply with the
10 provisions of Sections 8 through 12 and Subsection D of
11 Section 17 of that act and provided the following provisions
12 and procedures are included in each ordinance, resolution or
13 charter amendment:

14 (1) the right of public employees to form,
15 join or assist employee organizations for the purpose of
16 achieving collective bargaining;

17 (2) procedures for the identification of
18 appropriate bargaining units, certification elections and
19 decertification elections equivalent to those set forth in
20 the Public Employee Bargaining Act;

21 (3) the right of a labor organization to be
22 certified as an exclusive representative;

23 (4) the right of an exclusive representative
24 to negotiate all wages, hours and other terms and conditions
25 of employment for public employees in the appropriate

1 bargaining unit;

2 (5) the obligation to incorporate agreements
3 reached by the public employer and the exclusive
4 representative into a collective bargaining agreement;

5 (6) a requirement that grievance procedures
6 culminating with binding arbitration be negotiated;

7 (7) a requirement that payroll deductions
8 for the exclusive representative's membership dues be
9 negotiated if requested by the exclusive representative;

10 (8) impasse resolution procedures equivalent
11 to those set forth in Section 18 of the Public Employee
12 Bargaining Act; and

13 (9) prohibited practices for the public
14 employer, public employees and labor organizations that
15 promote the principles established in Sections 19 through 21
16 of the Public Employee Bargaining Act.

17 Section 27. SEVERABILITY. -- If any part or application
18 of the Public Employee Bargaining Act is held invalid, the
19 remainder or its application to other situations or persons
20 shall not be affected.

21 Section 28. EFFECTIVE DATE. -- The effective date of the
22 provisions of this act is July 1, 2003. _____

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